UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LAKENIA MAHDI,	)	
	)	
Plaintiff,	)	
	)	Cause No. 4:19-CV-00183
v.	)	JURY TRIAL DEMANDED
	)	
JULIAN BUSH, *et al*.	)	
	)	
Defendants.	)	
	)	

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants have moved to dismiss Lakenia Mahdi's complaint for failure to state a claim. In support, defendants submit the following.

Facts as Alleged

Plaintiff purports to assert claims for injunctive relief and damages on behalf of herself and "hundreds" of unknown persons. The prolix and confusing complaint names three officers of the City of St. Louis as parties defendant: Julian Bush, City Counselor; Mayor Lyda Krewson; and Police Commissioner John Hayden. Defendant Bush is sued "officially and individually," Complaint [doc. 2] ¶5. Defendants Krewson and Hayden are sued in their official capacities only. ¶¶6-7. Plaintiff also apparently thinks that Commissioner Hayden and the "St. Louis Metropolitan Police Department" are the same. *Id.* ¶7.

According to the complaint, stripped of argumentative detail, plaintiff was arrested in January 2016 by St. Louis police officers. She was charged with municipal ordinance violations of resisting arrest and interfering with a police officer. Complaint [doc. 2] ¶¶8-14. At her appearance in municipal court on the charge or charges, a City prosecutor induced her to sign a

release in exchange for a reduction of charge, threatening her with increased charges and jail if she did not sign. Unwillingly, plaintiff signed the release and the charge was duly amended. *Id.*, ¶¶20-24. Because of the release that she signed, plaintiff alleges that she believed she should not proceed with any suit (until now) based on her allegedly wrongful arrest and associated search and seizure of her cell phone. *Id.* ¶¶62, 67.

From case-specific allegations regarding plaintiff's execution of a release, the complaint proceeds to general allegations that defendant Bush has a "blanket policy" of requiring every individual charged with a "municipal" charge of resisting arrest to sign an agreement in which he or she releases any claims or causes of action against the City and its employees and, in exchange, the prosecutor will "recommend" dismissing the resisting charge. This policy is described by plaintiff as the defendants' "rec." policy. Complaint [doc. 2] at ¶ 43. Plaintiff further alleges that it is the policy of the Police Department to "'normally charge' municipal resisting arrest over the state offense municipal [sic] resisting arrest." *Id*. at ¶ 44. Plaintiff refers to this alleged policy of the Police Department as the "normal" policy. *Id*. Plaintiff claims that, together, these two policies "directly and indirectly motivated SLMPD officers to use excessive force or make false arrests with the protection of the City of St. Louis municipal courts" and "have established a tyrannical culture by the SLMPD throughout the City of St. Louis." *Id*. at ¶¶ 23, 45. She claims the "rec. & normal" policy led police officers to use excessive force in arresting her and unlawfully to seize and search her cell phone. *Id.* ¶12.

In Count I, plaintiff alleges that the alleged policy and practice of using release-dismissal agreements infringes on her "freedom of speech and freedom of expression rights to petition the courts guaranteed under the First Amendment." *Id*. at ¶ 85. In Count II, plaintiff alleges the release-dismissal Agreement she signed is unenforceable and seeks declaratory relief to that

effect and an injunction "from [sic] the Defendants' blanket Release policy." *Id*. at p. 26. She also seeks a declaratory judgment "that every Release agreement signed under the blanket Release policy is unenforceable on public policy grounds." *Id*. In Count III, plaintiff alleges that Defendants lacked probable cause to arrest her and used excessive force in effectuating her arrest. *Id*. at ¶¶ 114-117. Count III further alleges that the "rec. & normal" policies somehow caused her constitutional rights to be violated. *Id*. at ¶ 122.

1. Plaintiff's complaint fails to allege a claim against defendant Bush individually, because he has no personal interest in the enforcement of the release agreements attacked by plaintiff and he enjoys absolute prosecutorial immunity or qualified immunity to any claim for damages.

The face of the complaint shows that defendant Bush, as City Counselor of the City of St. Louis, is the chief prosecutor of municipal ordinance violations. Assuming the truth of the allegations regarding the "rec. & normal" policy, it is clear that a policy or practice with regard to negotiating plea or dismissal agreements in the context of municipal prosecutions is part and parcel of the advocacy function of a prosecutor. Whether a "blanket policy" is unconstitutional or not, a prosecutor is absolutely immune from liability under 42 U.S.C. §1983 for any action taken in the role of prosecuting a criminal charge. Further, a prosecutor cannot be held liable under §1983 for a "failure to train" subordinate prosecutors in matters involving the exercise of legal judgment in connection with prosecuting charges. Thus, defendant Bush in his individual capacity cannot be held liable in damages under §1983 on plaintiff's allegations. *Van de Kamp v. Goldstein*, 555 U.S. 335 (2009). Absolute immunity "applies even if the prosecutor's steps to initiate a prosecution are patently improper" or in the face of "[a]llegations of unethical conduct and improper motives in the performance of prosecutorial functions[.]" *Sample v. City of*

Woodbury, 836 F.3d 913, 916 (8th Cir. 2016)[citations omitted]; see also *Schloss v. Bouse*, 876 F.2d 287 (2d Cir. 1989).

Assuming that defendant Bush does not enjoy absolute immunity, he nevertheless is entitled to qualified immunity on the facts pleaded here. An officer is immune from liability under 42 U.S.C. §1983 unless the plaintiff can plead and prove that, first, the officer's action violated the plaintiff's constitutional rights, and, second, that the unconstitutionality of the defendant's conduct was clearly established at the time, so that a reasonable officer could not have believed that his actions were lawful. *Ashcroft v. al-Kidd*, 563 U.S. 731, 742 (2011).

Contrary to plaintiff's complaint, it is not "clearly established" in this Circuit (or anywhere else, for that matter) that prosecutors may not routinely seek releases in exchange for dismissing municipal ordinance violations. On the contrary, it is clearly established that there is no *per se* rule invalidating such releases, as such releases must be examined on a case-by-case basis. Compare *Town of Newton v. Rumery*, 480 U.S. 386 (1987) with *Woods v. Rhodes*, 994 F.2d 494 (8th Cir. 1993). Thus, assuming that plaintiff was subjected to a "blanket" release/dismissal policy, such a "blanket" policy was and is not clearly established as unconstitutional--particularly in the municipal prosecution context, where literally thousands of petty offenses are prosecuted annually.

The claims for declaratory and injunctive relief are likewise inapplicable to defendant Bush individually. Defendant Bush as an individual, apart from his official position as prosecutor of municipal charges, has no authority to impose conditions on prosecutions in municipal court and has no role to play in asserting the validity of the release executed by plaintiff, which runs to the City and its police officers. It is elementary that injunctive and declaratory relief is not available when there is no justiciable case or controversy. As an

individual, defendant Bush has no power to act in regard to plaintiff's claims. Thus, all claims for declaratory and injunctive relief against defendant Bush in his individual capacity must be dismissed. Cf. *Lane v. Franks*, 573 U.S. 228 (2014)(successor in office substituted as defendant on claims for declaratory and injunctive relief in §1983 case); *Hafer v. Melo*, 502 U.S. 21 (1991)(distinguishing individual capacity and official capacity §1983 suits).

To survive a motion to dismiss under F.R.Civ.P. 12(b)(6), a complaint must allege facts sufficient "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Neither "labels and conclusions" nor "a formulaic recitation of the elements of a cause of action" will suffice. *Twombly*, 550 U.S. at 545. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice to defeat a motion to dismiss." *Iqbal*, 556 U.S. at 678 citing *Twombly*, 550 U.S. at 556. Plaintiff's complaint on its face fails to allege a claim for relief against defendant Bush individually.

2. The complaint fails to state an actionable claim for injunctive relief against the City of St. Louis--the actual defendant in the "official capacity" claims against defendants Bush, Krewson and Hayden--because plaintiff lacks standing to assert such a claim and, in any event, the complaint fails to allege an unconstitutional policy or custom causing constitutional injury.

At the outset, it is important to clarify the status of the defendants in this action. As noted above, only defendant Bush is sued individually. It is elementary that a claim under § 1983 against an officer in his official capacity is a claim against the governmental entity and not the individual officer. E.g., *Hafer v. Melo*, supra. Thus, the claims asserted by plaintiff against defendants Bush, Krewson and Hayden in their official capacities are functionally claims against

the City of St. Louis.[1] See also *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) citing *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n. 55 (1978). For that reason, it is proper for a court to dismiss a claim against a government officer in his official capacity if it is redundant of a claim asserted against the governmental entity. *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010). In this case, the claims against defendants Bush, Krewson and Hayden in their official capacities are redundant of each other, and so the claims against defendants Bush and Hayden should be dismissed, with the claim against defendant Krewson being treated as a claim against the City of St. Louis.

Turning to the substance of plaintiff's complaint against the City, the *sine qua non* of a §1983 claim for injunctive relief is that the plaintiff have standing to seek such relief. E.g., *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). To have standing, the plaintiff must plead and prove that he or she has suffered an injury in fact caused by the defendant's challenged conduct, and redressable by the relief sought. E.g., *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 108-09 (1998). Plaintiff's standing in this case depends to some extent on whether she has plausibly alleged a municipal policy or custom causing a constitutional injury.

Local governments, like the City, are responsible only for their own illegal acts. *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (internal citations omitted). They are not vicariously liable under § 1983 for their employees' actions. *Id*.

[1] The complaint's references to the St. Louis Police Department are mere surplusage. The Department (now, properly, the division of police) is an agency of the City and is not a suable entity. See *Gay v. City of St. Louis*, 2018 U.S. Dist. LEXIS 124073 at *5-6 (Mo. E.D. July 24, 2018); *Ballard v. Missouri*, Case No. 4:13-CV-528 JAR, 2013 U.S. Dist. LEXIS 57153 (E.D. Mo. Apr. 22, 2013) (holding that "[p]laintiff's claims against the City of St. Louis Department of Public Safety, the St. Louis County Justice Center, the City of St. Louis Justice Center, and MSI/Workhouse are legally frivolous because these defendants are not suable entities"); see also *Mosley v. Reeves*, 99 F.Supp.2d 1048, 1053 (E.D. Mo. Jan. 21, 2000).

"The Supreme Court has set a high bar for establishing municipal liability under § 1983, and demands careful analysis from district courts, to avoid any risk that liability could be imposed under a theory of respondeat superior." *Soltesz v. Rushmore Plaza Civic Ctr.*, 847 F.3d 941, 947 (8th Cir. 2017) citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479 (1986).

Thus, the first inquiry "in any case alleging municipal liability under § 1983 is the question whether there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." *City of Canton v. Harris*, 489 U.S. 378, 385 (1989). A plaintiff seeking to impose liability on a municipality is required to identify either an official policy or a widespread custom or practice that was the moving force behind the plaintiff's constitutional injury. See *Board of Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 404 (1997); *Crawford v. Van Buren County, Ark.*, 678 F.3d 666, 669 (8th Cir. 2012). "It is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality." *Brown*, 520 U.S. at 404.

An official policy represents the decisions of a municipality's legislative body, or of an official who maintains the final authority to establish governmental policy. *Brown*, 520 U.S. at 403; *Ware v. Jackson County, Mo.*, 150 F.3d 873, 880 (8th Cir. 1998). For a municipality to be held liable on the basis of custom, "there must have been a pattern of 'persistent and widespread' unconstitutional practices which became so 'permanent and well settled' as to have the effect and force of law." *Jane Doe "A" v. Special School Dist.*, 901 F.2d 642, 646 (8th Cir. 1990); *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978).

In Count I, plaintiff claims that the "blanket release policy prohibits, stops, censors, impedes and restricts plaintiff's First Amendment rights to freedom of speech and freedom of expression guaranteed under the Constitution." Complaint, doc. 2, at ¶ 86. Ostensibly, plaintiff

is claiming that the release/dismissal agreement she signed prevents her from bringing any claim, suit or cause of action against the City or its employees arising from her arrest on January 14, 2016.

Plaintiff has not plausibly alleged a violation of her First Amendment rights warranting the injunctive relief claimed. The release/dismissal agreement appended to her complaint does not bar her from speaking about her arrest and contains no language that could be construed as a prior restraint on any protected communication by plaintiff. Doc. 2-1. Moreover, it does not interfere with her right to petition the government for redress of grievances because the agreement itself does not bar her from initiating or prosecuting a claim or lawsuit based upon her arrest.

The filing of the instant lawsuit quite clearly discredits plaintiff's claim that the "blanket release policy" infringes on her "freedom to petition the courts." Doc. 2, ¶ 85. The release/dismissal agreement memorializes *a promise by plaintiff* to refrain from asserting certain claims against the City or its agents, in exchange for leniency in the municipal court prosecution; but as the complaint itself bears testament, the release/dismissal agreement did not prevent her from initiating a lawsuit in which she asserts claims against the City for excessive force and unlawful search and seizure. Plaintiff is free to petition the courts and claim the release/dismissal agreement is invalid, and indeed, she has already done so here. Thus the existence of this lawsuit demonstrates that the release/dismissal agreement does not infringe on plaintiff's right to petition the courts. On the contrary, if the release at issue is unenforceable, plaintiff will have lost nothing; if it is enforceable, then plaintiff has suffered no deprivation of a protected right.

Moreover, the few courts that have examined release/dismissal agreements, such as the one at issue in this litigation, have indicated that the First Amendment is not implicated by a

defendant's waiver of civil liability, although the agreement itself may not be enforceable. *See Harmer v. Adkins*, 1994 U.S. Dist. LEXIS 4714 at *13 (N.D. Ind. Aug. 15, 2014)("Although a release or waiver of liability which has been executed under duress or coercion may not be enforceable as a release or waiver, it does not implicate the First Amendment."); cf. *Salkil v. Mount Sterling Twp. Police Dep't*, 458 F.3d 520, 529-530 (6th Cir. 2006) (rejecting sanctions against attorney for arguing that municipality's policy of demanding release/dismissal agreements for the sole purpose of avoiding constitutional responsibilities violates the First Amendment, but clarifying that "[t]his is not to say that a municipality's policy or practice of demanding release/dismissal agreements violates the First Amendment.")

3. Count II should be dismissed for the additional reasons that plaintiff fails to sufficiently plead facts entitling her to injunctive or declaratory relief, in that she shows no likelihood of irreparable harm or that legal remedies are inadequate.

In Count II of her complaint, plaintiff seeks a declaration by this Court that "every Release agreement signed under the blanket Release policy is unenforceable on public policy grounds." Complaint, doc. 2, p. 26, ¶ 108. She further seeks an "immediate and permanent injunction from Defendant's blanket release policy." *Id*. Plaintiff also claims the release agreement signed by Plaintiff is unenforceable because public policy is "harmed by the enforcement of the contract." *Id*. at ¶ 108.

Plaintiff has not pleaded facts entitling her to an injunction or a declaratory judgment that declares all release-dismissal agreements entered by the City unenforceable. Plaintiff asks this Court to issue a declaratory judgment announcing a *per se* rule against the City entering release agreements with defendants charged with resisting arrest. However, the Supreme Court long ago rejected a *per se* rule that would prohibit the type of release-dismissal agreements at issue in this

lawsuit. *Newton v. Rumery*, 480 U.S. 386, 419 (1987). Moreover, it is well settled that an individual can waive her constitutional rights in criminal proceedings so long as the waiver is voluntary, knowing, and intelligent. *Brady v. United States*, 397 U.S. 742, 748 (1970).

In *Newton*, a criminal defendant had signed a release-dismissal agreement wherein he agreed to release any civil claims he might have against the town of Newton and its officials if the county dismissed criminal charges pending against him. 480 U.S. at 414. Months later, the defendant filed a § 1983 action alleging that the town and its officers had violated his constitutional rights by arresting and imprisoning him. *Id*. at 414-415. The town of Newton and the officers filed a motion to dismiss relying on the release-dismissal agreement as an affirmative defense. *Id*. at 415. The trial court concluded the release was valid, rejecting the defendant's argument that the release-agreement was unenforceable because it violated public policy. *Id*. at 415. On appeal, the Court of Appeals reversed and adopted a *per se* rule invalidating release-dismissal agreements. *Id*.

On review, the Supreme Court reversed, rejecting the Court of Appeals' holding that all release-dismissal agreements are invalid *per se*. *Id*. at 419. The Court found that release-dismissal agreements may further important public interests by protecting public officials from the burdens of defending unjust civil rights claims. *Id*. at 419. The Court specifically rejected the plaintiff's argument that prosecutors will exploit the use of release-dismissal agreements for wrongdoing. *Id*. The Court found that the plaintiff had voluntarily entered the agreement, there was no evidence of prosecutorial misconduct, and that enforcement would not adversely affect relevant public interests. *Id*. at 419.

In *Woods v. Rhodes*, supra, the Eighth Circuit also upheld a release-dismissal agreement. 994 F.2d 494, 502 (8th Cir. 1992). Similar to this case, the plaintiff faced pending criminal

charges, and the Sioux City prosecutor agreed to dismiss the charges if the plaintiff signed an agreement, releasing Sioux City, its police department, an officer and other individuals from any liability for her arrest. *Id*. at 497. The plaintiff later filed a civil rights claim alleging civil rights violations in connection with her arrest. *Id*. at 497. The defendants moved for summary judgment based on the release agreement. *Id*. The district court denied the motion, ruling that it could not state that the release was voluntary or rule out prosecutorial overreaching. *Id*.

On appeal, the Eighth Circuit found the record established plaintiff had voluntarily signed the agreement, there was no evidence of prosecutorial overreaching, and the release did not adversely affect the public interest. *Id*. at 500-502. The Eighth Circuit reversed the denial of summary judgment and held the release-dismissal agreement executed by the plaintiff valid and enforceable. *Id*. at 502.

Woods and *Rumery* make clear that there is no *per se* rule against the use of dismissal-release agreements, and the determination of whether a dismissal-release agreement is valid and enforceable requires a fact-sensitive analysis. *Woods*, 994 F.2d at 499; *Rumery*, 480 U.S at 397. Plaintiff therefore fails to state a claim for injunctive or declaratory judgment because a declaration that all release/dismissal agreements are *per se* invalid would be erroneous as a matter of law.

Moreover, Plaintiff is not entitled to a preliminary or permanent injunction because she has not sufficiently pleaded that she will suffer irreparable harm or lacks an adequate remedy at law. Plaintiff's claim for injunctive relief in this case in effect seeks federal intrusion into the prosecution of municipal violations in municipal courts. Because plaintiff alleges no facts showing that she is faced with immediate and irreparable harm, there is no basis for injunctive relief. In truth, plaintiff lacks standing to attack any release/dismissal but her own, and she

certainly lacks standing to obtain injunctive relief directed at ongoing municipal court prosecutions. See *City of Los Angeles v. Lyons*, supra; *O'Shea v. Littleton*, supra. Plaintiff's claims in this case are an attempt to anticipate under what circumstances the plaintiff would be made to appear in the future before the City's municipal courts, which would take this Court into the realm of speculation and conjecture. Principles of federal equity jurisprudence and federalism counsel that §1983 equitable relief is to be granted sparingly and only in clear and plain cases. Where the relief sought is against those in charge of an executive branch of an agency of local government, those principles of equity and federalism limit a federal court's power to supervise the functioning of a local government agency. See *Rizzo v. Goode*, 423 U.S. 362 (1976).

Because plaintiff has not and cannot plead facts showing a likelihood of future irreparable harm from her (or anyone's) being confronted with a "release/dismissal agreement" in the future, no claim for equitable relief is stated and the complaint should be dismissed. In the absence of irreparable injury, which also implies lack of an adequate legal remedy, a party is not entitled to injunctive relief. *Chlorine Institute, Inc. v. Soo Line R. R.*, 792 F.3d 903, 914-15 (8th Cir. 2015); see also *O'Shea v. Littleton*, 414 U.S. 488 (1974).

Declaratory relief under 28 U.S.C. §2201 is likewise unavailable to plaintiff. She cannot obtain a decree invalidating every release/dismissal agreement ever entered into by the City in the past, as each such agreement must be evaluated on a case-by-case basis. Adding amorphous class action allegations does nothing to cure the deficiency. Because each agreement must be evaluated individually, the plaintiff's claims simply are not amenable to class action treatment. See *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011).

Because the Supreme Court long ago rejected a *per se* rule prohibiting release-dismissal agreements and Plaintiff fails to sufficiently plead that she will suffer irreparable harm, Count II fails to state a claim upon which relief may be granted.

4. Count III fails to state a claim because this count is premised upon a theory of *respondeat superior* liability, and plaintiff has not adequately pleaded that a City policy, custom or practice directly caused officers to use excessive force during her arrest.

In Count III, plaintiff attempts to assert a claim for damages based on a violation of her Fourth and Fourteenth Amendment rights against defendant Hayden in his official capacity, and so in reality against the City. Plaintiff claims that she was subjected to unlawful arrest, unlawful search and excessive force, supposedly on account of a "custom" of such behavior caused by the "rec. & normal" policy alleged in the complaint. Doc. 2, ¶¶ 114-122.

Plaintiff alleges that her arrest was unlawful and that she was subjected to "unjustified and unreasonable" force. Doc. 2, ¶¶ 112, 114, 115. This allegation fails to state a claim against the City because it is premised on a theory of *respondeat superior* liability. However, municipalities are not vicariously liable under § 1983 for the alleged misconduct of their employees, and the Supreme Court has consistently refused to hold municipalities liable on a theory of *respondeat superior*. *See Monell*, 436 U.S. at 691-92; *Connick*, 563 U.S. at 60; *Pembaur*, 475 U.S. at 478; *Brown*, 520 U.S. at 403; *Oklahoma City v. Tuttle*, 471 U.S. 808, 818 (1985); *St. Louis v. Praprotnik*, 485 U.S. 112, 122 (1988); *Canton v. Harris*, 489 U.S. 378, 392 (1989).

As discussed above, to state an actionable § 1983 claim against a municipality, Plaintiff is required to plead facts showing that her constitutional deprivation was caused by either an official policy or a widespread custom or practice having the force of law. *Brown*, 520 U.S. 397,

404. Here, however, plaintiff has not pleaded facts showing that her alleged constitutional deprivation was caused by an official policy or a widespread custom or practice. *Brown*, 520 U.S. 397, 404. Rather, she has pleaded formulae and conclusions: that "[d]efendant used unjustified and unreasonable force to arrest the Plaintiff as a direct and proximate cause [sic] of Defendant's custom of excessive force practices cultivated, encouraged and concealed by Defendant's 'normal circumstance' policy to charge the violation of Muni. Code 15.10.10 and Defendant's blanket release policy and practices to hide excessive force cases," ¶ 114; that "Defendant unlawfully seized Plaintiff as a direct and proximate cause [sic] of unlawful seizures practices cultivated, encouraged, established and concealed by Defendant's normal circumstance to charge the violation of Muni. Code 15.10.10, together with, the Defendant's blanket release policy and practices to conceal misconduct." *Id*. at ¶ 118. She also purports to cite "examples of" the Police Department's "widespread tyrannical pattern and practices." *Id*. at ¶ 68.

Although difficult to discern, Plaintiff's theory of municipal liability appears to be that the "rec. & normal policy" somehow "caused and concealed a widespread pattern of civil rights abuses throughout the City of St. Louis." Doc. 2, ¶¶ 42-47.

These allegations do not plausibly allege that the City's so-called "rec. & normal" policies directly caused her arresting officers to use excessive force or arrest her without probable cause. Plaintiff's complaint consists of mere conclusions and is devoid of any facts that show a direct causal link between the "rec. & normal" policy and her arrest. *Canton*, 489 U.S. at 385 (emphasis added). Significantly, she has not alleged that her arresting officers were even *aware* of the "rec. & normal" policy of asking defendants charged with resisting arrest to sign releases. This alone is fatal to her claim.

Thus, Plaintiff's theory of municipal liability is far too attenuated to plausibly allege that the "rec. & normal" policy directly caused her arrest or the alleged use of excessive force by the arresting officers. Her allegations amount to mere conclusions "masquerading as facts," and the Court need not accept them as true. *Iqbal*, 556 U.S. at 677 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."); *Barnes v. Oliver*, 18-CV-00093-RWS, 2018 WL 3239503 at *10 (E.D. Mo. July 3, 2018).

Because Plaintiff has not pleaded facts sufficient to raise her right to relief "above the speculative level," Count III fails to state a claim against the City for municipal liability. *Twombly*, 550 U.S. 544, 570 (2007).

CONCLUSION

Plaintiff has failed to allege plausible facts that would entitle her to any conceivable relief against defendants. Accordingly, the complaint herein must be dismissed, subject to defendants' request for attorney's fees.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify this **Memorandum** was electronically filed on **June 17, 2019** with the Court for service by means of Notice of Electronic Filing upon all attorneys of record.

/s/ Erin K. McGowan